

Remarks

Claims 2-33 and 48-68 are pending in the present application and claims 8, 11-17, 21-25, 27-29, 50-52, 56, and 58-67 have been withdrawn from consideration as being drawn to non-elected species. Claims 2-7, 9, 10, 18-20, 26, 30-33, 48, 49, 53-55, 57, and 68 have been rejected by the Examiner. The present Amendment cancels claims 2, 5, 16-24, 30, 31, 50-53, 57, and 67. Claims 3, 4, 6, 7, 8, 10-15, 25-32, 48, 54, 55, 58-64, and 68 are amended as above. Applicant submits that the cancellation of any subject matter from the claimed invention does not constitute an admission that the Examiner's previous rejections are correct. Applicant reserves the right to pursue cancelled subject matter in future applications. Applicant respectfully requests reexamination and reconsideration of the case, as amended. Each of the rejections levied in the Office Action is addressed individually below.

I. Rejections under 35 U.S.C. § 112, first paragraph, for lack of written description.

Claims 2-7, 9-10, 18-20, 26, 30-33, and 55 stand rejected under 35 U.S.C. § 112, first paragraph, as failing to comply with the written description requirement. Applicant submits that this rejection is rendered moot by the present Amendment. Independent claim 2 has been canceled, and the rejected dependent claims have either been canceled or amended to depend from claim 48. Claim 55 has been amended to recite the inducible reporter gene, nitric oxide synthase, and the reporter gene product, nitric oxide, which are fully supported by the Specification as the Examiner has already indicated. Applicant reserves the right to pursue the canceled subject matter in future applications.

II. Rejections under 35 U.S.C. § 112, second paragraph, as being indefinite.

Claim 68 stands rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In particular, claim 68 was rejected for lack of antecedent basis for the term "the linkage." Claim 68 has been amended to depend from claim 3 instead of claim 2. Claim 3 recites "a cleavable linkage" thereby providing antecedent basis for the term in claim 68. Applicant respectfully submits that the rejection, therefore, be removed.

III. Rejections under 35 U.S.C. § 102.

Claims 2-4, 10, 18-20, 26, 30-31, 33, 54, and 55 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Foulkes *et al.* (U.S. Patent 5,580,722); Borchardt *et al.* (*Chemistry & Biology* 4(12):961-68, 1997); and/or Still *et al.* (U.S. Patent 5,565,324). Applicant submits that the rejections under § 102 are rendered moot by the present Amendment. Claim 2 has been canceled, and dependent claims 3-4, 10, 18-20, 26, 30-31, 33, and 54 have been canceled or amended to depend from claim 48. Claim 55 has been amended to recited the inducible reporter gene, nitric oxide synthase, and the reporter gene product, nitric oxide. None of the cited references discloses the use of nitric oxide synthase as an inducible reported gene. Therefore, none of the references can anticipate the pending claims as presently amended, and Applicant requests that the rejection be removed.

IV. Rejections under 35 U.S.C. § 103.

Claims 2-4, 10, 18, 26, 33, 53, 54, and 68 stand rejected under 35 U.S.C. § 103(a), as being unpatentable over Still *et al.*, U.S. Patent 5,565,324, and Ashby *et al.*, U.S. Patent 5,569,588. Applicant submits that this rejection is rendered moot by the present Amendment; therefore, Applicant requests that the rejection be removed.

Claims 2-7, 9-10, 18-20, 30-31, 33, 53, 54, 57, and 68 stand rejected under 35 U.S.C. § 103(a), as being unpatentable over Still *et al.*, U.S. Patent 5,565,342, and Misko *et al.*, *Analytical Biochemistry* 214(1):11-16, 1993. Again, Applicant submits that this rejection is rendered moot by the present Amendment; therefore, Applicant requests that the rejection be removed.

Claims 48 and 49 stand rejected under 35 U.S.C. § 103(a), as being unpatentable over Still *et al.*, U.S. Patent 5,565,342, and Misko *et al.*, *Analytical Biochemistry* 214(1):11-16, 1993. The Examiner states that Still *et al.* differs from the claimed invention by failing to include the detection of nitric oxide due to NO synthase activity in a cell based assay. The Examiner cites Misko *et al.* for teaching “a cell based assay for monitoring NO synthase activity using 2,3-diaminonaphthalene (DAN)” and concludes that “it would have been obvious to a person of ordinary skill in the art . . . to include the detection of nitric oxide due to NO synthase activity in


a cell based assay . . . as taught by Misko *et al.* in the method of Still *et al.* Applicant respectfully disagrees because Misko *et al.* does not teach the detection of nitric oxide, NO.

The Examiner is incorrect about what Misko *et al.* teaches. Misko *et al.* does not teach the detection of nitric oxide, NO. Rather, Misko *et al.* teaches the detection of nitrite, NO₂⁻. Nitric oxide is not nitrite. The claimed invention recites detection of nitric oxide; therefore, Misko *et al.* does not teach this aspect of the claimed invention. Since Still *et al.* also does not teach this aspect of the invention, as the Examiner has admitted, the combination of Still *et al.* and Misko *et al.* cannot render obvious the claimed invention. Applicant respectfully submits that the Examiner has not established a *prima facie* case of obviousness because the claimed invention is not taught or suggested by the combination of the cited references. Applicant request that the rejection be removed.

In view of the forgoing amendments and arguments, Applicant respectfully submits that the present case is now in condition for allowance. A Notice to that effect is requested.

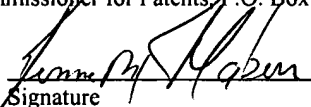
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Respectfully submitted,


C. Hunter Baker, M.D., Ph.D.
Registration Number: 46,533

Choate, Hall & Stewart LLP
Exchange Place
53 State Street
Boston, MA 02109
(617) 248-5000
Date: June 21, 2005

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